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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,012	02/11/2004	Richard W. Foote	P05792	3404
23990	7590	03/20/2007		
DOCKET CLERK P.O. DRAWER 800889 DALLAS, TX 75380			EXAMINER FULK, STEVEN J	
			ART UNIT	PAPER NUMBER
			2891	
			MAIL DATE	DELIVERY MODE
			03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/777,012

Applicant(s)

FOOTE ET AL.

Examiner

Steven J. Fulk

Art Unit

2891

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended:
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


B. WILLIAM BAUMELSTER
SUPERVISORY PATENT EXAMINER
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DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to the rejection of claims 1-3, 7-9, 13-17 and 21 under 35 U.S.C. 102(a) have been fully considered but are not found persuasive.

Applicant argues that Sachitano does not teach or suggest that a base of the double poly bipolar transistor and a gate of the double poly metal oxide semiconductor contain substantially identical dopants. However, Applicant agrees that Sachitano teaches both the base of a double poly PNP transistor and the gate of a double poly NMOS transistor to have an n-type dopant. The limitation of "substantially identical" found in claim 1 is written broadly enough to be anticipated by both the base and gate containing an n-type dopant (as opposed to one containing a p-type dopant and one containing an n-type dopant). Neither the species of n-type dopant nor the concentration of n-type dopant are required by the claim.

2. Applicant's arguments with respect to the rejection of claims 4, 10 and 20 under 35 U.S.C. 103(a) have been fully considered but are not found persuasive.

Applicant argues that Suda does not teach a PMOS transistor gate and an NPN bipolar transistor to contain substantially identical dopants. However, Applicant agrees that Suda teaches both the PMOS transistor gate and the NPN bipolar transistor to contain a p-type dopant of boron. The limitation of "substantially identical" is written broadly enough to be anticipated by both the

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base and gate containing a p-type dopant of boron. The concentration of p-type dopant is not required by the claim.

Applicant also argues that there is no suggestion to combine the references. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in both the prior art and in the knowledge generally available to one of ordinary skill in the art, that is P-type gates and N-type gates were art recognized functional equivalents for forming the conductive gate of a PMOS transistor (Suda, col. 9, lines 57-65) (MPEP § 2144.06).

3. Applicant's additional comments regarding the advantages of the instant application over the prior art are not found persuasive. The advantages of saving mask and implant procedure steps are not relevant to the current product claims. Any process limitations that are recited in product claims would invoke the product-by-process doctrine. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps (*MPEP* § 2113). Therefore, the number of mask and implant steps are irrelevant in product claims so long as the resulting structure is the same.

Conclusion


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Fulk whose telephone number is (571) 272-8323. The examiner can normally be reached on Monday through Friday, 9:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Baumeister can be reached on (571) 272-1722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SSF

Steven J. Fulk
Patent Examiner
Art Unit 2891
March 15, 2007


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